

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BEERS BROS., INC.

and

Case 1--CA--27779

MASSACHUSETTS LABORERS'
BENEFIT FUNDS

June 25, 1991
DECISION AND ORDER

By Chairman Stephens and Members Cracraft and Oviatt

Upon a charge filed by the Massachusetts Laborers' Benefit Funds November 8, 1990, the General Counsel of the National Labor Relations Board issued a complaint December 18, 1990 against Beers Bros., Inc., the Respondent, alleging that it has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the National Labor Relations Act. On February 18, 1991, the Respondent filed an answer, admitting all of the factual allegations in the complaint.

On May 3, 1991, the General Counsel filed a motion to transfer proceeding to the Board and for Summary Judgment. On May 8, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

All of the factual allegations of the complaint have been admitted to be true and the Respondent has raised no defense. In the absence of any disputed allegations, we grant the General Counsel's uncontested Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, a corporation with an office and place of business in Hanover, Massachusetts, is engaged as a masonry contractor in the construction industry. During the 12-month period ending November 8, 1990, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$500,000 and has provided services valued in excess of \$50,000 for employers, including Presidents Place Associates, who are themselves directly engaged in commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Massachusetts Laborers' District Council of the Laborers' International Union of North America AFL--CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Unit and the Union's Representative Status

The Associated General Contractors of Massachusetts, Inc. and Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc. (the Associations), have been organizations composed of employers engaged in the construction industry, and which exist for the purpose, inter alia, of representing their employer-members in negotiating and administering

collective-bargaining agreements with various labor organizations, including the Union.

About June 1, 1988, the Associations and the Union entered into a collective-bargaining agreement (the 1988--1991 agreement), which by its terms was effective for the period June 1, 1988 through May 31, 1991.

On April 24, 1989, the Respondent executed an Acceptance of Agreement(s) and Declarations of Trust with the Union by which it agreed to be bound by the 1988--1991 agreement.

All employees of the Respondent in the classifications set forth in the 1988--1991 agreement, but excluding all other employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Since about April 24, 1989, and at all times material, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit, and at all times material the Union has been recognized as such representative by the Respondent. Such recognition has been embodied in an Acceptance of Agreement(s) and Declarations of Trust.

At all times material, the Union, by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of the employees in the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

B. The Violations

Since about July 20, 1990, the Respondent has failed and refused to remit the union dues under article VIII and pay the fringe benefit amounts which have become due as of, and since July 20, 1990, under articles XI, XII, XIII, XIV, and XV of the 1988--1991 agreement as follows:

- (1) Health and Welfare Fund
- (2) Pension Fund
- (3) Training Trust Fund
- (4) Legal Services Fund
- (5) Annuity Fund

These subjects relate to the wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. Accordingly, we find that the Respondent, by such conduct, has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the representative of its employees and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By failing and refusing to remit the union dues to the Union as required by article VIII of the 1988--1991 agreement, and by failing to make the fringe benefit contributions as required by articles XI, XII, XIII, XIV, and XV of the 1988--1991 agreement, the Respondent has refused to bargain with the Union over mandatory subjects of bargaining, and has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall, inter alia, order the Respondent to bargain on request with the Union and make whole unit employees and the funds for any loss of benefits caused by its failure to adhere to the terms of the 1988--1991 agreement,

including making the required benefit fund contributions.¹ The Respondent shall also reimburse its unit employees for any expenses ensuing from the Respondent's unlawful failure to make such payments as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest to be computed in the manner prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987). We shall also order the Respondent to remit to the Union those union dues withheld from employees' pay, with interest to be computed in the manner prescribed in New Horizons, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Beers Bros., Inc., Hanover, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Massachusetts Laborers' District Council of the Laborers' International Union of North America, AFL--CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) Failing and refusing to adhere to the terms of its collective-bargaining agreement with the Union by failing and refusing to make contractually required fringe benefit contributions, and by deducting union dues from employees' wages and failing and refusing to remit them to the Union.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

¹ We leave to the compliance stage the question whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy our "'make-whole'" remedy. Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7 (1979).

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Abide by the collective-bargaining agreement with the Union, including, but not limited to, its provisions governing fringe benefit contributions and union dues remittance.

(b) Make whole the unit employees for any loss of benefits suffered as a result of the Respondent's failure to abide by the terms of its collective-bargaining agreement with the Union, including making required fringe benefit contributions, in the manner set forth in the remedy section of this decision.

(c) Remit to the Union with interest the union dues deducted from the employees' pay, in the manner set forth in the remedy section of this decision.

(d) On request, bargain collectively and in good faith with the Union as the exclusive representative of the employees in the following appropriate unit:

All employees of the Respondent in the classifications set forth in the 1988--1991 Agreement, but excluding all other employees, guards and supervisors as defined in the Act.

(e) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(f) Post at its facility in Hanover, Massachusetts, the attached notice marked "'Appendix.'"² Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C.

June 25, 1991

James M. Stephens, Chairman

Mary Miller Cracraft, Member

Clifford R. Oviatt, Jr., Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Massachusetts Laborers' District Council of the Laborers' International Union of North America, AFL--CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

WE WILL NOT fail and refuse to adhere to the terms of our collective-bargaining agreement with the Union by failing to make fringe benefit contributions and by failing to remit to the Union the union dues withheld from employees' pay as the contract requires.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL adhere to the terms of our collective-bargaining agreement with the Union, including, but not limited to, its provisions governing fringe benefit contributions and union dues remittance.

WE WILL make whole the unit employees for any loss of benefits suffered as a result of our failure to abide by the terms of our collective-bargaining agreement with the Union, including making required payments to the employees' fringe benefit funds.

WE WILL remit to the Union with interest the union dues deducted from employees' pay.

WE WILL, on request, bargain with the Massachusetts Laborers' District Council of the Laborers' International Union of North America AFL--CIO as the exclusive bargaining representative of our employees in the bargaining unit:

All employees of the Respondent in the classifications set forth in the 1988--1991 Agreement, but excluding all other employees, guards and supervisors as defined in the Act.

BEERS BROS., INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 10 Causeway Street, Sixth Floor, Boston, Massachusetts 02222-1072, Telephone 617--565--6739.